IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/08/2002

CORAM

The Hon'ble Mr.Justice E.PADMANABHAN.

Writ Petition No.443 of 2000

RPG Cellular Services Limited,
V Floor,Spencer Plaza,
769. Anna Salai,
Chennai-600 002. .. Petitioner

-Vs-

The Commissioner of Customs (AIR PORT),
AIR Cargo Complex,
Meenampakkam,
Chennai-600 027. .. Respondents

Writ Petition filed under Article 226 of The Constitution of India
for the issue of a Writ of Mandamus and as stated therein.

!For Petitioner -- Mr.Arvind P.Datar,
Senior Counsel for
M/s.C.Saravanan.

^For Respondent -- Mr.N.Muralikumaran,
A.C.G.S.C.

:O R D E R

The petitioner prays for the issue of a Writ of Mandamus directing the respondent to produce the documents sought for by the petitioner relating to similar/identical imports made by other telecom operators from the same foreign supplier and more specifically described in the petitioner's letter dated 14-12-1999.

2.Heard Mr.Arvind P.Datar, learned senior counsel appearing for the petitioner and Mr.N.Muralikumaran, Additional Central Government Standing Counsel appearing for the respondent.

3.The request of the writ petitioner has already been turned down while stating that in respect of one of the importers, the case has been settled under Samadhan scheme, but in respect of other two importers the respondent has not assigned any reason. Be that so, what the petitioner wants is to rely upon are the rate of import of identical instruments namely, Cell Phone, GSM Mobile Telephone Network Hardware Equipments (hardware and software) and what the petitioner seeks is that certain information is not available with the petitioner but is available with the respondent or other

Customs Commissionerate either at Mumbai or Delhi and which are available for the entire Customs Department. If those details are furnished, the petitioner may be in a position to put forward his case effectively and reasonably.

4. In other words, the petitioner wants to take the particulars or rates of the price fixed or accepted in respect of other identical/similar importers in respect of the identical/similar goods imported from the same country or other countries as those details will have a bearing on the adjudication and could be pressed into service or in its support by the petitioner to sustain its objection or vindicate its stand. There is no reason at all to reject the said request. It is admitted that the respondent is in possession of those details and nothing prevents the respondent from furnishing particulars of the price fixed in those cases where identical goods and were imported from the same country. The petitioner's request is for furnishing details or copy of proceedings in those cases or value or price as fixed for such identical goods imported, as it is a relevant material to pass orders in the case of the petitioner as well. On that basis, it is well open and just for the petitioner either to place reliance on the particulars or details of rate of identical goods imported and thereafter submit its additional objections as well.

5.According to the learned Additional Central Government Standing counsel for the respondent, in this case those materials are not relevant, as in the present case there are certain materials which have been collected during the search of petitioner's premises and certain admissions have been made and based upon which the impugned show cause notice has been issued.

6. Be that so, there is no justifiable reason or rhyme to deny the petitioner's request for the particulars which the petitioner seeks to rely upon to put forward its case or objections, as those particulars or details have a bearing and are very much available with the respondent. In other words, the learned senior counsel though relies on Rule 5 of the Customs Valuation Rules, in my considered view, it is not necessary to refer to that rule in detail as by extending the principles of natural justice, a direction could very well be issued as prayed for.

7. It is well settled that principles of natural justice applies to the present proceedings as it is not excluded by statutory provision or Rule. It is equally well settled that in quasi judicial proceedings or assessment or other proceedings by which liability is sought to be fastened, be it a civil liability, be it a levy of tax or duty or leading to civil consequences, the principles of natural justice is required to be followed. It is concomitant that on such occasions, the authority has to disclose the materials which are relied upon against the person who is being proceeded, to enable him to state his objection or stand or such other objections as an answer to sustain his stand.

8. If materials relied upon are not furnished or disclosed in the show cause notice, the same constitute a valid ground to interfere in exercise of judicial review by issue of Writ of Certiorari. Placing reliance on Article 14 of The Constitution, it is being contended that there shall be no discrimination and in case of discriminatory treatment, it could be pointed out that the individual is being treated differently or subjected to hostile discrimination, besides advancing the plea of arbitrary and unfair exercise of power.

9. In extension of this well laid down principles, it is but fair to

furnish or disclose such information or details or copy of other proceedings available with public authority or assessing authority and details of which are not available to the assessee or dealer or citizen who is sought to be proceeded by calling upon the public authority to furnish those materials, which may enable the assessee or dealer or importer to put forth such legal pleas, including the plea of discrimination or unfair treatment or alike.

10. In the present case, details of assessment or valuation proceedings in respect of identical goods/items imported from the same country of origin by other importers which are required by the petitioner is furnished, it will enable the petitioner to know whether he is being treated differently or is subjected to discriminatory treatment or hostile treatment.

11. That apart, the petitioner will be enabled to set out or take such a stand depending on the very materials available with the respondent. Further there cannot be any legal impediment or objection to disclose nor it is a State secret, but on the other hand being assessment proceedings, a public document and the accessibility to such proceedings or contents of it cannot be denied. To stand the test of fairness or reasonableness or not being arbitrary, the respondent could very well furnish the materials required by the petitioner. That apart, this will avoid multiplicity of proceedings and result in earlier conclusion of assessment proceedings in a fair manner. When the respondent themselves are in possession of the details or particulars and when the respondent seek to treat the petitioner differently from others, it is not only in fairness but also incumbent on the part of the respondent to furnish the details available as on date to the petitioner and thereafter pass orders in accordance with law.

12. It has to be mentioned that nothing prevents the respondent from passing orders on merits either accepting the objections or overruling the objections even after furnishing the materials available with the respondent as the facts of the case warrants. It is pertinent to notice that the Cell phone hardwares and softwares were imported by the first two companies are from the same supplier and the hardware and software ratio is identical and hence the petitioner seeks to rely upon the ratio accepted by the department in those cases for being applied or adopted to the present case also.

13. In the circumstances, there will be a direction to the respondent to furnish the records of the proceedings or details based upon which the equipment imported by M/s. Bharti Cellular Ltd., M/s. Hutchison Max Ltd and Skycell Communication Ltd. to the petitioner and such particulars shall be furnished by the respondent within four weeks from the date of communication of this order. Thereafter the respondent may proceed to pass orders after considering the explanation or objection that may be submitted by the petitioner. The writ petition is allowed in the above terms. Consequently, W.M.P.Nos.647 of 2000 and 1 11 of 2001 are closed.

13-08-2002
Index-Yes
Internet-Yes

Sk/-

E.PADMANABHAN,J.

To

The Commissioner of Customs (AIR PORT),
AIR Cargo Complex,
Meenampakkam,
Chennai-600 027.